

JUL 30 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS ERNST HEYDEL,

Defendant - Appellant.

No. 07-30234

D.C. No. CR-03-30009-ALA

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Ann L. Aiken, District Judge, Presiding

Submitted July 22, 2008<sup>\*\*</sup>

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Thomas Ernst Heydel appeals from the 27-month sentence imposed following his guilty-plea conviction for attempting to possess child pornography in

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. § 2252A(a)(5)(B), (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Heydel contends that the district court erred by only considering the offense, rather than his extensive rehabilitation, when imposing his sentence. Because the district court considered Heydel's extensive rehabilitation at the sentencing hearing, we conclude that the district court did not procedurally err and that the sentence is not substantively unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-98 (2007).

Heydel also contends that the district court erred by failing to notify him of its intent to rely on a letter from a different defendant at sentencing and by considering the letter at sentencing. Because the district court did not rely on the letter in its sentencing decision, we conclude that the district court did not err. *Cf. United States v. Warr*, No. 07-30125, 2008 WL 2598891, at \*9 (9th Cir. Jul. 2, 2008) (holding that because the district court relied on a Bureau of Prisons study at sentencing, it should have notified the appellant of the study before the hearing).

**AFFIRMED.**